2012 IL App (4th) 111050-U

Filed 7/6/12

NO. 4-11-1050

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CHRIS HARRISON and LISA HARRISON, Plaintiffs-Appellants, v. KRISSTA UPDEGRAFF NEWBY, Defendant-Appellee.	))))))))	Appeal from Circuit Court of Coles County No. 09CH64 Honorable Mitchell K. Shick, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, rejecting the plaintiffs' claim that the trial court erred by ordering the parties' respective deeds be reformed to comply with the intent of the original property owners at the time they created the tracts.

¶ 2 In August 2009, plaintiffs, Chris and Lisa Harrison, sued defendant, Krissta Updegraff Newby, alleging that Newby had been using a portion of their real property (Parcel A")—which adjoined Newby's property—without permission. Newby did not deny that she had been using Parcel A, counterclaiming that although Parcel A had not been included in her deed, it was included in the Harrisons' deed by mistake as part of her grandparents' divorce decree, which created the two deeds.

¶ 3 Following an October 2011 bench trial, the trial court denied the Harrisons' claim and entered judgment in favor of Newby, ordering the parties' respective deeds be reformed to

correct the mistake of fact as to the property boundaries, resulting in the title to Parcel A being transferred to Newby.

¶ 4 The Harrisons appeal, arguing that the trial court erred by reforming the deeds. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In August 2009, the Harrisons sued Newby, seeking damages and to recover Parcel A, alleging that Newby had been using Parcel A—which adjoined Newby's property—without permission. Newby did not deny that she had been using Parcel A or that Parcel A was included in the Harrisons' deed. Instead, Newby counterclaimed that although Parcel A had not been included in her deed, it was included in the Harrisons' deed by mistake as part of her grandparents' divorce, which created the two deeds. Our review of the record in this case, including the evidence presented at the parties' October 2011 bench trial, reveals the following uncontested facts.

¶ 7 In 1990, Jerry and Rosella Pollard began a contentious divorce, and in March 1991, the Pollards appeared before the trial court to recite their marital settlement agreement. As part of their agreement, the Pollards agreed to divide their marital real estate—one large tract of land—such that Rosella would receive the real estate directly east of a public road that divided the marital real estate (the East Tract) and Jerry would receive the real estate directly west of the public road (the West Tract). The court later accepted the Pollards' agreement, intending to incorporate it into its judgment. However, the written settlement agreement and the quitclaim deed that followed did not describe the dividing line as the public road, but followed a separate section line. The result was that Rosella's deed did not include Parcel A, a 1.991 acre,

"triangular-shaped" parcel of land on the east side of the public road at the north end of the eastern property.

¶ 8 In August 1995, Jerry transferred the West Tract by warranty deed to Charles and Deatrice Greathouse. Following Rosella's death in March 2005, the East Tract was transferred to Newby, Rosella's granddaughter, in accordance with Rosella's will. Newby continued to use and enjoy Parcel A—which had been fenced in for several years—as her grandmother had used and enjoyed it. In May 2008, the Harrisons purchased a portion of the West Tract from the Greathouses. Approximately one year later, the Harrisons had the West Tract surveyed. That survey revealed that their deed for the West Tract included Parcel A.

¶ 9 As previously explained, the Harrisons thereafter sued to recover Parcel A, and Newby counterclaimed. Following an October 2011 bench trial, the trial court denied the Harrisons' suit and entered judgment in favor of Newby, ordering the parties' respective deeds be reformed to correct the mistake of fact as to the property boundaries, resulting in title to Parcel A being transferred to Newby.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 The Harrisons argue that the trial court erred by reforming the deeds. We disagree.

¶ 13 The standard for reforming of deeds based upon a mistake of fact is well-settled.

> "A court of equity will reform a deed upon the ground of mistake of fact, mutual and common to the parties and in existence at the time of execution of the instrument showing the parties

> intended one thing and by mistake expressed another. *Schmitt v. Heinz*, 5 Ill. 2d 372, 125 N.E.2d 457; *Pulley v. Luttrell*, 13 Ill. 2d 355, 148 N.E.2d 731. The mistake must be established by satisfactory evidence leaving no reasonable doubt as to the mutual intention of the parties. *Pulley v. Luttrell*, 13 Ill. 2d 355, 148 N.E.2d 731, *Quist v. Streicher*, 18 Ill. 2d 376, 164 N.E.2d 44." *Korsgaard v. Elliott*, 17 Ill. App. 3d 1061, 1063, 309 N.E.2d 263, 265 (1974).

¶ 14 In this case, the record shows, and the parties appear to agree, that the original conveyance that created the West Tract and East Tract involved a mutual mistake of fact. The Pollards intended that the public road would divide the West Tract from the East Tract. By mistake, the parties' deeds inaccurately described the two tracts by the use of a separate section line instead of the public road.

¶ 15 Accordingly, the evidence clearly showed that the Pollards intended their conveyance to divide the two tracts at issue by the public road, and not the section line recorded in the deeds. Therefore, we conclude that the trial court did not err by finding that sufficient evidence showed such a mutual mistake. This, however, does not end our analysis.

¶ 16 When such a mutual mistake exists among the original parties to a conveyance, any deed to a subsequent purchaser must be reformed unless "it is established that such purchaser was a *bona fide* purchaser for value without notice of the mistake or of facts which would put him on inquiry." See *Shelor v. Witt*, 69 Ill. App. 3d 172, 176, 387 N.E.2d 18, 20 (1979) (noting that a trial court may use its equitable powers to reform a deed against a subsequent

purchaser when that purchaser is on notice of the mistake, which does not require the purchaser to be on actual notice, only that he has knowledge of such fact that would put a prudent person on inquiry as to title). Accordingly, we turn our analysis to whether the Harrisons, as purchasers, should have been on notice of the mutual mistake in this case. On this question, we find the Third District Appellate Court's decision in *Shelor,* 69 Ill. App. 3d at 172, 387 N.E.2d at 18, persuasive.

¶ 17 In 1971, Samuel Witt owned adjoining tracts of land, a "North Tract" and a "South Tract," which were separated by a public road. *Shelor,* 69 Ill. App. 3d at 174, 387 N.E.2d at 19. That year, Witt sold the North Tract to Dale Ballard and the South Tract to Kenneth and Leola Shelor. *Id.* When the respective deeds for these conveyances were drawn up, a draftsman's error used a section line, and not the roadway, as the property dividing line. *Id.* None of the parties noticed the variance—which extended the North Tract to the South Tract's side of the road by approximately seven acres—between the legal descriptions used in the deed and the actual understanding and intention of the parties. The Shelors farmed the South Tract, including the land that had been mistakenly included in Ballard's deed to the North Tract. *Id.*

¶ 18 In 1973, Ballard conveyed his interest in the North Tract to Roy Copelan and Lawrence Bain. *Shelor,* 69 Ill. App. 3d at 175, 387 N.E.2d at 19. The parties testified that they understood the transaction to include only the land on the north side of the road. *Id.* After the sale to Copelan and Bain, the Shelors continued to farm the land that had been mistakenly included in the deed to Copelan and Bain. *Id.*

¶ 19 In 1975, however, Copelan and Bain erected a fence that limited the Shelors' access to the disputed acreage. *Shelor,* 69 Ill. App. 3d at 175, 387 N.E.2d at 19. Shortly

thereafter, the Shelors sued, seeking reformation of the 1971 deeds from the Witts to the Shelors, as well as the subsequent deed from Ballard to Copelan and Bain. *Id.*, at 176, 387 N.E.2d at 20. The trial court entered judgment in favor of the Shelors and directed the conveyances be made to correct the misdescription. *Id.* Copeland and Bain appealed.

¶ 20 The appellate court affirmed, concluding that the trial court's findings were not against the manifest weight of the evidence because the possession demonstrated by the Shelors, which extended from prior to the purchase by Copelan and Bain until well after that purchase, was sufficient notice to have put a purchaser on inquiry. *Shelor,* 69 Ill. App. 3d at 178, 387 N.E.2d at 21. The court added that Copelan and Bain were "chargeable with knowledge of the mistake in the original conveyances, a mistake which even a limited inquiry and investigation would have uncovered." *Id.*

¶ 21 In this case, the possession demonstrated by Newby—that is, her continuous use and enjoyment of Parcel A, which was fenced and ran along the north frontage of her tract, intersecting where her driveway met the public road—extended from March 2005, before the Harrisons purchased the West Tract, until the Harrisons instituted their lawsuit. Given this evidence, we conclude that the trial court's finding that the Harrisons were chargeable with the knowledge of the mistake in the conveyance between the Pollards was not against the manifest weight of the evidence. A limited inquiry and investigation, as demonstrated by the fact that a simple survey revealed the recorded boundaries, would have uncovered the mistake in the original conveyance.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court's judgment.

¶ 24 Affirmed.